

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**-against-**

**THE PAINTING KNOWN AS “*HANNIBAL*” BY  
THE ARTIST JEAN-MICHEL BASQUIT, *et al.*,**

**Defendants *in-rem.***  
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**08 Civ. 1511 (RJS)**

**CLAIMANT BROADENING-INFO ENTERPRISES, INC.’S  
MEMORANDUM OF LAW IN REPLY TO CLAIMANT BANK  
TRUSTEE ON REMAND IN FURTHER OPPOSITION TO  
THE GOVERNMENT’S MOTION FOR SUMMARY JUDGMENT**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES .....	i
REPLY TO BANK TRUSTEE ON REMAND.....	1
CONCLUSION .....	2

**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<b><u>Statutes &amp; Rules</u></b>	
18 U.S.C. § 542 .....	2
19 U.S.C. § 1595a(c) .....	2
Rule 56(a) & (c), Federal Rules of Civil Procedure .....	1-2

**REPLY TO BANK TRUSTEE ON REMAND**

On remand from the Second Circuit, Claimant Broadening-Info Enterprises, Inc. (“Broadening”) respectfully submits this Memorandum of Law in reply to the Claimant Vanio Cesar Aguiar, as Trustee for the Estate of Banco Santos, S.A. (“Bank Trustee”), and does so in further opposition to the Government’s motion for summary judgment on the Second Amended Complaint’s First Claim.

The Bank Trustee’s Memorandum of Law supports the Government’s motion for summary judgment with essentially the same legal argument that the Government has made and with some assertions as to what “the evidence shows.”

With respect to the legal argument, Broadening respectfully refers the Court to the Broadening’s Supplemental Memorandum of Law filed on remand in response to the Government and does not repeat what is stated there.

With the assertions as to what “the evidence shows,” it is instructive that the Bank Trustee does not even cite Rule 56 of the Federal Rules of Civil Procedure, much less address the standard stated therein: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Stating to a jury “the evidence shows” is one thing; satisfying the standard in Rule 56 of the Federal Rules of Civil Procedure is another.

Thus, the error that the Bank Trustee makes is that the Bank Trustee does not address the question before this Court given the present procedural posture: whether summary

judgment should be granted on the First Claim in the Government's Second Amended Complaint for civil forfeiture of the Defendants *in-rem*, the painting *Hannibal* and the sculpture *Togatus*, pursuant to 19 U.S.C. § 1595a(c) based solely on the importation of goods under false invoices in violation of 18 U.S.C. § 542.

To that question, Broadening's Supplemental Memorandum of Law establishes that the answer is "no," because there is a genuine issue of material fact and the Government is not entitled to judgment as a matter of law. The Government is not entitled to summary judgment given the information provided in the Declaration of Herberto Carnide concerning the importation of Defendants *in-rem Hannibal* and *Togatus* -- specifically, when A.M. Barral Fine Art Advisory LLC ("Barral") imported the painting *Hannibal* in the United States on consignment from Broadening for the purpose of sale, the painting was advertised on Barral's website; and all dealings were open and public as to both *Hannibal* and *Togatus*. According to Mr. Carnide, "[a]t no time did Broadening take any steps to conceal its ownership of the pieces of art [*Hannibal* and *Togatus*], their whereabouts or to 'smuggle' them into the United States." (SDNY Docket No. 77.)

**Dated: New York, New York  
June 15, 2012**

**NESENOFF & MILTENBERG, LLP**

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